

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

|                             |   |                                |
|-----------------------------|---|--------------------------------|
| YUKIO KUSADA,               | ) |                                |
| Plaintiff                   | ) |                                |
|                             | ) |                                |
| v.                          | ) |                                |
|                             | ) | Civil Action No.: 05-30043-MAP |
| BERKSHIRE EAST SKI RESORT,  | ) |                                |
| UNION TERMINAL PIERS, INC., | ) |                                |
| and                         | ) |                                |
| NORTHFIELD MOUNT HERMON     | ) |                                |
| SCHOOL,                     | ) |                                |
| Defendant and               | ) |                                |
| Third Party Plaintiff       | ) |                                |
|                             | ) |                                |
| v.                          | ) |                                |
|                             | ) |                                |
| TAKERU KUSADA               | ) |                                |
| Third Party Defendant       | ) |                                |

**MOTION OF PLAINTIFF TO FILE FIRST AMENDED COMPLAINT  
(ASSENTED TO)**

Plaintiff respectfully moves pursuant to Fed. R. Civ. P. 15(a) that he be permitted to amend the Complaint to add two defendants, Francis Millard and Michael Atkins. As grounds therefore plaintiff states:

1. This case stems from an incident which occurred on February 20, 2004 in which the plaintiff suffered severe brain injuries when he skied into a tree at Berkshire East Ski Resort. At the time of the incident the plaintiff was participating in, and receiving course credits for, a physical education ski course offered by Northfield Mount Hermon School where he was a student.

2. Depositions in the case have revealed that Francis Millard and Michael Atkins had direct and ultimate responsibility for the administration of the physical education course which was called the Recreational Ski program. Francis Millard was the Director of Physical Education at the time of the incident and supervised Mr. Atkins. Michael Atkins was the Coordinator of Physical Education and was charged by Mr. Millard with the responsibility of specifically administering the Recreational Ski program.

3. Discovery has revealed that Kusada, a beginner skier, received no ski lessons, received no instruction on terrain selection, received no instruction on how to turn or stop on skies, and was skiing a part of the mountain inappropriate for his level of ability at night on skis designed for an expert skier when he skied without a helmet into a tree. Given the duties attendant on Millard and Atkins in their respective positions as Director and Coordinator of the Physical Education Department at Northfield Mount Hermon School both are necessary parties to the efficient administration of the litigation of this matter.

4. Fed. R. Civ. P. 15(a) provides that motions for leave to amend the complaint shall be freely granted when justice so requires.

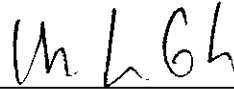
5. No Party will be prejudiced by the addition of the additional defendants. The time for discovery was recently enlarged by the court on joint motion of all the parties. The interests of justice will be served by ensuring that all claims against all potential defendants in this severe injury case are heard in the same trial.

6. Mr. Potter, counsel for Northfield Mount Herman School, will be representing the new defendants and is accepting service for them.

WHEREFORE, plaintiff respectfully requests that his motion be allowed and that he be permitted to file and serve the amended complaint, which is attached hereto and marked "A."

By His Attorneys

BREAKSTONE, WHITE-LIEF & GLUCK, P.C.



RONALD E. GLUCK

BBO #196950

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Suite 530

Boston, MA 02108-1906

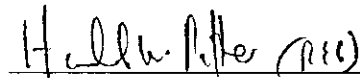
(617) 723-7676

Assented to:

The Defendants,

By their Attorneys

Harold W. Potter, Esquire



Holland & Knight, LLP

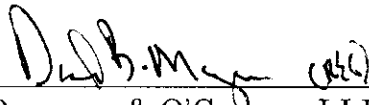
10 St. James Avenue, 11<sup>th</sup> Floor

Boston, MA 02116

BBO #: 404240

(617) 523-2700

David B. Mongue, Esquire

A handwritten signature in dark ink, appearing to read "D.B. Mongue", is written over a horizontal line.

Donovan & O'Connor, LLP  
1330 Mass MoCA Way  
North Adams, MA 01247  
BBO #: 351780  
(413) 663-3200

Certificate of Service

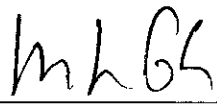
I, Ronald E. Gluck, of Breakstone, White-Lief & Gluck, P.C., hereby certify that on this date I served a copy of the within pleading by mailing a copy of same, postage prepaid, to:

David B. Mongue, Esquire  
Donovan & O'Connor, LLP  
1330 Mass MoCA Way  
North Adams, MA 01247

and

Harold W. Potter, Jr.  
Holland & Knight, LLP  
10 St. James Avenue, 11<sup>th</sup> Floor  
Boston, MA 02116

March 1, 2006

  
\_\_\_\_\_  
Ronald E. Gluck

UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS

|                             |   |                                     |
|-----------------------------|---|-------------------------------------|
| YUKIO KUSADA,               | ) |                                     |
| Plaintiff                   | ) |                                     |
|                             | ) |                                     |
| vs.                         | ) | Civil Action                        |
|                             | ) | No.: Civil Action No.: 05-30043-MAP |
|                             | ) |                                     |
| BERKSHIRE EAST SKI RESORT,  | ) |                                     |
| UNION TERMINAL PIERS, INC., | ) |                                     |
| NORTHFIELD MOUNT HERMON     | ) |                                     |
| SCHOOL,                     | ) |                                     |
| FRANCIS MILLARD and         | ) |                                     |
| MICHAEL ATKINS,             | ) |                                     |
| Defendants                  | ) |                                     |
|                             | ) |                                     |
| v.                          | ) |                                     |
|                             | ) |                                     |
| TAKERU KUSADA               | ) |                                     |
| Third Party Defendant       | ) |                                     |

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FIRST AMENDED COMPLAINT

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**The Parties**

1. The plaintiff, Yukio Kusada, at all relevant and material times was a student at Northfield Mount Hermon School, 206 Main Street, Northfield, Massachusetts, where he resided during the school year. Mr. Kusada currently resides at 1-8-3 ebisu-higashi, naniwa-ku, Osaka, Japan.

2. The defendant, Berkshire East Ski Resort, is a Massachusetts business entity with a usual place of business at South River Road, Charlemont, Massachusetts.
3. The defendant, Union Terminal Piers, Inc., is a Michigan corporation with a usual place of business at Huron Street, Mackinac Island, Michigan.
4. The defendant, Northfield Mount Hermon School, is a Massachusetts educational institution with a usual place of business at 206 Main Street, Northfield, Massachusetts.
5. The defendant, Francis Millard, was the Director of Physical Education at Northfield Mount Hermon School on or about February 20, 2004, with a usual place of business at 206 Main Street, Northfield, County of Franklin, Commonwealth of Massachusetts.
6. The defendant, Michael Atkins, was the Coordinator of Physical Education and a Physical Education Teacher at Northfield Mount Hermon School on or about February 20, 2004, with a usual place of business at 206 Main Street, Northfield, County of Franklin, Commonwealth of Massachusetts.

#### **Jurisdiction**

7. Jurisdiction is based upon 28 U.S.C. § 1332.

#### **The Facts**

8. On or about February 20, 2004, defendant, Berkshire East Ski Resort, owned, operated, and/or maintained the premises of Berkshire East Ski Resort,

located in Charlemont, Franklin County, Commonwealth of Massachusetts (hereinafter referred to as “the premises”), and owed a duty to all lawful visitors to maintain and operate the premises in a reasonably safe manner.

9. On or about February 20, 2004, defendant, Union Terminal Piers, Inc., owned, operated, and/or maintained the premises, and owed a duty to all lawful visitors to maintain and operate the premises in a safe and reasonable manner.
10. On or about February 20, 2004, defendant, Northfield Mount Hermon School, coordinated and supervised a ski trip to the premises as part of a ski class for its students, including the plaintiff, and owed a duty to the plaintiff to do so in a safe and reasonable manner.
11. On or about February 20, 2004, the plaintiff, Yukio Kusada, was a student at Northfield Mount Hermon School.
12. On or about February 20, 2004 and prior to February 20, 2004, Francis Millard was the Director of Physical Education at Northfield Mount Hermon School and was responsible for the administration of the physical education program known as the Recreational Ski Program.
13. On or about February 20, 2004 and prior to February 20, 2004, Michael Atkins was Coordinator of Physical Education and a Physical Education Teacher at Northfield Mount Hermon School and was responsible for the



administration of the physical education program known as the Recreational Ski Program.

14. On or about February 20, 2004, the plaintiff, Yukio Kusada, was a lawful visitor on the premises as a participant in the ski class coordinated by the defendant, Northfield Mount Hermon School.
15. On or about February 20, 2004, plaintiff, Yukio Kusada, was skiing on the premises and sustained severe personal injuries.
16. On or about February 20, 2004, plaintiff Yukio Kusada was participating in Northfield Mount Hermon School's physical education program known as the Recreational Ski Program at the Berkshire East Ski Resort.
17. The injuries sustained by the plaintiff were due to the carelessness and negligence of defendant, Berkshire East Ski Resort, its agents, servants, employees, and/or others for whom it was legally responsible, in the operation and/or maintenance of the premises.
18. The injuries sustained by the plaintiff were due to the carelessness and negligence of defendant, Union Terminal Piers, Inc., its agents, servants, employees, and/or others for whom it was legally responsible, in the operation and/or maintenance of the premises.
19. The injuries sustained by the plaintiff were due to the carelessness and negligence of defendant, Northfield Mount Hermon School, its agents,

servants, employees, and/or others for whom it was legally responsible, in the care and/or supervision of its students.

20. The injuries sustained by the plaintiff were due to the carelessness and negligence of defendant, Francis Millard, in the care and/or supervision of the plaintiff.
21. The injuries sustained by the plaintiff were due to the carelessness and negligence of defendant, Michael Atkins, in the care and/or supervision of the plaintiff.
22. As a result of the injuries sustained as aforesaid, the plaintiff, Yukio Kusada, was caused to suffer great pain of body and anguish of mind. His earning capacity has been and will continue to be impaired, and he has expended and will continue to expend large sums of money for medical care and attendance.

### **Causes of Action**

(Each Cause of Action Incorporates by Reference  
All Previous Allegations)

#### **First Cause of Action**

23. This is an action by the plaintiff, Yukio Kusada, against the defendant, Berkshire East Ski Resort, for damages caused by the negligence of the defendant, its agents, servants, employees or others for whom it was legally responsible resulting in personal injuries and consequential damages.

**Second Cause of Action**

24. This is an action by the plaintiff, Yukio Kusada, against the defendant, Union Terminal Piers, Inc., for damages caused by the negligence of the defendant, its agents, servants, employees or others for whom it was legally responsible resulting in personal injuries and consequential damages.

**Third Cause of Action**

25. This is an action by the plaintiff, Yukio Kusada, against the defendant, Northfield Mount Hermon School, for damages caused by the negligence of the defendant, its agents, servants, employees or others for whom it was legally responsible resulting in personal injuries and consequential damages.

**Fourth Cause of Action**

26. This is an action by the plaintiff, Yukio Kusada, against the defendant, Francis Millard, for damages caused by the negligence of defendant resulting in personal injuries and consequential damages.

**Fifth Cause of Action**

27. This is an action by the plaintiff, Yukio Kusada, against the defendant, Michael Atkins, for damages caused by the negligence of defendant resulting in personal injuries and consequential damages.

**Demands for Relief**

28. The plaintiff, Yukio Kusada, demands judgment, in the amount of his damages, together with interest and costs, against the defendants, Berkshire

East Ski Resort, Union Terminal Piers, Inc., Northfield Mount Hermon School, Francis Millard, and Michael Atkins jointly and severally as to the First, Second, Third, Fourth and Fifth Causes of Action.

**Jury Demand**

29. The plaintiff claims a trial by jury as to all counts.

By His Attorneys

BREAKSTONE, WHITE LIEF & GLUCK, P.C.

A handwritten signature in black ink, appearing to read 'MLG', is written over a horizontal line.

RONALD E. GLUCK

BBO #196950

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(617) 723-7676

**Certificate of Service**

I, Ronald E. Gluck, of Breakstone, White-Lief & Gluck, P.C., hereby certify that on this date I served a copy of the within pleading by mailing a copy of same, postage prepaid, to:

David B. Mongue, Esquire  
Donovan & O'Connor, LLP  
1330 Mass MoCA Way  
North Adams, MA 01247

and

Harold W. Potter, Jr.  
Holland & Knight, LLP  
10 St. James Avenue, 11<sup>th</sup> Floor  
Boston, MA 02116

March 1, 2006

  
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Ronald E. Gluck